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*courage is contagious*

## Viewing cable 09BERN98, UBS CASE: SWISS PERSPECTIVE AND A WAY FORWARD \

If you are new to these pages, please read an introduction on the [structure of a cable](#) as well as how to [discuss them](#) with others. See also the [FAQs](#)

### Understanding cables

Every cable message consists of three parts:

- The top box shows each cables unique reference number, when and by whom it originally was sent, and what its initial classification was.
- The middle box contains the header information that is associated with the cable. It includes information about the receiver(s) as well as a general subject.
- The bottom box presents the body of the cable. The opening can contain a more specific subject, references to other cables ([browse by origin](#) to find them) or additional comment. This is followed by the main contents of the cable: a summary, a collection of specific topics and a comment section.

To understand the justification used for the classification of each cable, please use this [WikiSource](#) article as reference.

### Discussing cables

If you find meaningful or important information in a cable, please link directly to its unique reference number. Linking to a specific paragraph in the body of a cable is also possible by copying the appropriate link (to be found at the paragraph symbol). Please mark messages for social networking services like Twitter with the hash tags **#cablegate** and a hash containing the reference ID e.g. **#09BERN98**.

Reference ID	Created	Released	Classification	Origin
<a href="#">09BERN98</a>	<a href="#">2009-03-04 15:48</a>	<a href="#">2011-08-30 01:44</a>	<a href="#">CONFIDENTIAL</a>	<a href="#">Embassy Bern</a>

Appears in these articles:

[http://www.letemps.ch/swiss\\_papers](http://www.letemps.ch/swiss_papers)

VZCZCXRO9450  
RR RUEHDBU RUEHFL RUEHKW RUEHLA RUEHNP RUEHROV RUEHSR  
DE RUEHSW #0098/01 0631548  
ZNY CCCCC ZZH  
R 041548Z MAR 09  
FM AMEMBASSY BERN  
TO RUEHC/SECSTATE WASHDC 5692  
INFO RUEHZL/EUROPEAN POLITICAL COLLECTIVE  
RHMFISS/DEPT OF JUSTICE WASHINGTON DC  
RUEATRS/DEPT OF TREASURY WASHINGTON DC

2009-03-04 15:48:00 09BERN98 Embassy Bern CONFIDENTIAL VZCZCXRO9450\  
RR RUEHDBU RUEHFL RUEHKW RUEHLA RUEHNP RUEHROV RUEHSR\  
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FM AMEMBASSY BERN\  
TO RUEHC/SECSTATE WASHDC 5692\  
INFO RUEHZL/EUROPEAN POLITICAL COLLECTIVE\  
RHMFISS/DEPT OF JUSTICE WASHINGTON DC\  
RUEATRS/DEPT OF TREASURY WASHINGTON DC C O N F I D E N T I A L SECTION 01 OF 02 BERN 000098 \  
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SIPDIS \  
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DEPT OF JUSTICE FOR B.SWARTZ \  
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E.O. 12958: DECL: 03/04/2019 \  
TAGS: [ECON](#) [ETRD](#) [EINV](#) [SZ](#)  
SUBJECT: UBS CASE: SWISS PERSPECTIVE AND A WAY FORWARD \  
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Classified By: CDA Leigh Carter for reasons 1.4(b) and (d). \

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11. (C) Summary. UBS' handover of client information to the \ Department of Justice incited criticism in numerous press \ articles and from several Swiss political parties calling the \ U.S. action one of extortion and blackmail. However, the \ step was supported by elements of the moderate to left \ parties. In discussions with econoff, several banking, \ business, and government representatives expressed disbelief \ at the extraordinary and criminal actions taken by UBS and \ surprise at the Swiss government's lackluster response and \ failure to fine UBS. The press lamented that the UBS case \ will mark the beginning of the "end of banking secrecy", \ despite public assurances by President (and Finance Minister) \ Hans-Rudolf Merz to the contrary. The Swiss public and \ government cherish banking secrecy as a (highly-profitable) \ national institution. The public's ire at the U.S. (and EU) \ for pressuring Switzerland should not be underestimated and \ could have a long-lasting negative backlash to bilateral \ relations and increased anti-Americanism. President Merz's \ overtures for concessions and incremental changes to secrecy \ open the door for a way forward: approaching Switzerland to \ discuss renegotiation of our bilateral agreement to \ incorporate the broader scope of coverage found in the \ U.S.-Liechtenstein tax agreement, specifically to include tax \ evasion. End Summary. \

\ PRESS CRITICIZE U.S. AS HEAVY HANDED \

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12. (U) UBS' handover of client information to the Department \ of Justice incited criticism in numerous press articles and \ from several Swiss politicians. However, the step was \ supported by elements of the moderate to left parties. As \ the continual lead story in most papers, the majority of \ quoted opinions recognize UBS' criminal conduct, however, \ they equally criticize the U.S. for exerting undue pressure \ in a time of global economic crisis to obtain documents prior \ to the conclusion of Switzerland's legal assistance \ proceedings. Many articles cite "extortion", "bullying", and \ "blackmail" by the U.S. Department of Justice in forcing UBS' \ and the Swiss government's hand in violating their judicial \ proceedings and bank secrecy laws. \

\ BUT UBS CONDUCT WENT TOO FAR! \

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13. (C) Despite these press articles, business, banking \ industry and government representatives expressed disbelief \ at the extraordinary criminal conduct of UBS bankers. Martin \ Naville, CEO of Swiss Amcham, told econoff that given the \ clear criminal actions, he was surprised by the Swiss \ government's reaction, which he opined made the situation far \ worse. He criticized the government for failing to provide \ the documents immediately upon the Federal Council's public \ announcement to do so, which allowed the courts to become \ involved and slowed down the process further. Naville, in a \ press interview, attempted to shore up U.S.-Swiss bilateral \ relations by stressing that the case is a U.S. domestic \ affair involving a bank licensed to do business in the U.S., \ with U.S. clients, and under U.S. laws. He criticized, \ however, the U.S. for moving forward prior to the conclusion \ of the legal assistance proceedings. This same opinion was \ reiterated to econoff by Swiss National Bank Deputy Head of \ Financial Stability Juerg Blum and other government officials \ in the financial arena. \

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14. (C) Bank representatives were equally surprised at the \ degree in which UBS skirted the law and the qualified \ intermediary agreement. CreditSuisse Managing Director of \ Public Policy Rene Buholzer stated that Swiss banks' biggest \ concern is that the U.S. will capitalize on UBS' egregious \ conduct as fodder to renegotiate the tax treaty and qualified \ intermediary (QI) agreement. Buholzer commented that the QI \ was riddled with loopholes that needed to be tightened, but \ regardless UBS had entered into criminal territory in \ exploiting them. He also could not understand why the Swiss \ banking authority, FINMA, did not fine UBS as well, and only \ gave them a slap on the wrist. Roland Marxer, Liechtenstein \ Deputy Foreign Minister, who has spent the last year working \ with the Liechtenstein-U.S. Tax Information Exchange \ Agreement (TIEA) and its impact on Liechtenstein's banking \ secrecy laws, also expressed shock that FINMA did not impose \

criminal fines on UBS. \

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THE DEMISE OF BANKING SECRECY? \

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15. (C) The media and pundits have questioned whether the UBS \ case will mark the end of banking secrecy. President Merz, \ on the other hand, stated in his press conference that the \ UBS case is an individual incident, involving criminal \ behavior that was always covered by the U.S.-Swiss bilateral \ arrangement, and therefore does not call into question \ banking secrecy. He compared it to money laundering and \ other financial crimes, and reminded the Swiss that banking \ secrecy is not designed to protect criminal behavior. \ Despite Merz' confident assurances in the institution of \ banking secrecy, the Federal Council created a task force to \ delve into the UBS criminal case and to determine the best \ path forward on the pending civil case. \

16. (C) The industry appears less concerned than expected \ regarding the fate of banking secrecy. Buholzer stated that \ he does not equate "the end of secrecy with the end of \ banking." BSI Bank Director General Vincenzo Piantedosi \ agreed with this assessment, although he cautioned that a \ "transition period" would be needed to "absorb excess labor \ forces" as the asset management business dwindled. Marxer \ noted that Liechtenstein has not experienced any fall in \ current wealth management assets since the TIEA was signed, \ but that the rate of new deposits was declining. Although \ SNB has not completed a study on the impact of secrecy on \ wealth management, Blum estimated it would have "some \ impact", but did not think its loss would affect "too many \ banks." \

17. (C) Bankers did warn that a level playing field was \ necessary to end bank secrecy without undue financial hardship \ to the Swiss. Both Buholzer and Marxer cited Singapore as a \ prime player that would benefit from the demise of secrecy in \ Europe. Piantedosi was not so concerned with non-European \ countries' markets since they do not offer the same history \ of reliability and stability, but did express reservations if \ other European havens, such as Austria, remained secrecy \ strongholds, while Switzerland did not. \

18. (C) While the bankers provide an optimistic view should \ secrecy be abolished, the Swiss public and government cherish \ banking secrecy, not just as a contributor to the financial \ sector and GDP, but as a national institution and part of \ Switzerland's cultural identity. The Swiss government will \ push hard against the 52,000 John Doe summons, which they \ view as a fishing expedition, outside of legal assistance and \ in violation of their banking secrecy laws. The public's ire \ at the U.S. (and EU) for pressuring Switzerland should also \ not be underestimated and could have a long-lasting negative \ backlash on bilateral relations and increased \ anti-Americanism. \

THE WAY FORWARD \

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19. (C) Both the Swiss and Liechtenstein governments, as well \ as bankers, have intimated at a solution that would provide \ them with much needed political cover and still allow the \ U.S. to breach the current tax fraud versus tax evasion \ cut-out in our bilateral agreements. President Merz admitted \ at a recent conference that banking secrecy, while not at its \ end, must evolve to match current times. He suggested that \ concessions must be made to stave off criticism and \ blacklistings. Marxer confirmed that Liechtenstein also \ recognized secrecy was evolving, but he warned that changes \ needed to be incremental to allow citizens and financial \ institutions to adjust. As an example, he cited \ Liechtenstein's expansion of exceptions to secrecy laws first \ through money laundering restrictions, then the QI, and \ finally the more recent TIEA. \

10. (C) Given President Merz's overtures for concessions and \

the incremental changes that have already occurred within \  
Switzerland, post recommends that the USG approach \  
Switzerland to discuss renegotiation of our bilateral \  
agreement to incorporate the broader scope of coverage found \  
in the U.S.-Liechtenstein TIEA, specifically to include tax \  
evasion. The Swiss government can spin the bilateral \  
agreement as a further step in our relations that assists \  
both countries in halting willful criminal conduct. At the \  
same time, by not opening the door completely, it will enable \  
the government to assure the public that secrecy exists \  
absent criminal conduct, as well as provide the Swiss some \  
defense against the EU's expected campaign to eliminate \  
secrecy altogether. \  
CARTER \v